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EXAMINER	
GOLIGHTLY, ERIC WAYNE	

ART UNIT	PAPER NUMBER
1714	

NOTIFICATION DATE	DELIVERY MODE
07/23/2010	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

mailroom@bskb.com

Office Action Summary	Application No.	Applicant(s)	
	10/581,250	ECKER ET AL.	
	Examiner	Art Unit	
	Eric Golightly	1714	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *07 April 2010*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11* is/are pending in the application.

4a) Of the above claim(s) *3 and 8-10* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,2,4-7 and 11* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date *07 April 2010*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

1. Applicants' response with amendment filed on 4/7/2010 is acknowledged. Claims 1-11 are pending. Claims 3 and 8-10 are withdrawn. Claim 11 is new.

Claim Objections

2. Claims 1, 2 and 4 are objected to because of the following informalities:

Regarding claims 1 and 2, the phrase "heat recovery" in line 5 of claim 1 should apparently be replaced with "heat-recovery" in order to be uniform with the usage of "heat-recovery" in claim 1, line 2 and claim 2, line 3.

Regarding claim 4, the word "and" in line 1 should be deleted.

Appropriate correction is required.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

> The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1, 2, 4-7 and 11 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicants regard as the invention.

Regarding claim 1, the phrase "wherein ... an exhaust-air fan is employed ... a plurality of openings are provided ... a closing element is provided" in lines 3-8 renders that claim indefinite because the fan, openings and closing element are not positively

claimed and it is not clear if they are part of the required structure of the claimed dishwasher. It appears that the intended meaning may be for these features to not be part of the required structure, and this meaning will be used for purposes of examination. If the intended meaning is for these features to be part of the required structure, applicants are advised to amend the claim such that steps such as "is employed" and "is provided" (which are more properly used in method claims) are replaced with structural requirements, for example "wherein the suction-extraction means comprises an exhaust-air fan".

Claim 2 recites the limitations "the capacity" in line 2 and "the exhaust-air quantity" in line 2. There is insufficient antecedent basis for these limitations in the claim.

Claim 11 recites the limitation "the ... partially open positions" in line 2 in line 2. There is insufficient antecedent basis for these limitations in the claim. It is noted that claim 1 recited "partially *closed* position" in line 14.

5. The common knowledge or known in the art statements made in the previous Office action are taken to be admitted prior art because applicants either failed to traverse the examiner's assertion of official notice or the traverse was inadequate. MPEP 2144.03(C).

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by DE 19644438 to Woerter (hereinafter "Woerter").

Woerter teaches a conveyor dishwasher (abstract) having at least one washing zone (Fig. 1, ref. 28 and 40), a rinsing zone (Fig. 1, ref. 56), a heat-recovery device (Fig. 1, ref. 82, 90 and 92), a drying zone (Fig. 1, ref. 68) and a suction-extraction means (Fig. 1, ref. 96). The dishwasher is fully capable of being used wherein an exhaust-air fan is employed in the suction-extraction means (Fig. 1, ref. 96) for exhausting air from a plurality of the zones through the heat-recovery device (Fig. 1, ref. 82, 90 and 92), a plurality of openings (Fig. 1, ref. 52 and 66) are provided between the zones (Fig. 1, ref. 28, 40, 56 and 68) and the suction-extraction means for conducting flows of air from the zones to the suction-extraction means, a closing element (Fig. 1, ref. 52 and 66) is provided at each opening for controlling the flow of air through the opening, each of the closing elements being movable between an open position, a wholly closed position and a partially closed position; and wherein the movement of the closing elements between the open, wholly closed and partially closed positions is controlled in dependence on an operating state of individual ones of the zones of the dishwasher (for example, an operating state wherein there are no dishes being loaded into a zone results in a wholly

closed position, and an operating state wherein a dish is being loaded into a zone results in an open position or a partially closed position).

Claim Rejections - 35 USC § 103

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

9. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

10. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicants are advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

11. Claims 6 and 7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Quayle (US 4,247,158) in view of Woerter (DE 19644438).

12. Regarding claim 6, Quayle teaches a process for operating a dishwasher (abstract) and discloses a extracting air from the dishwasher depending on the operating state of the dishwasher (col. 8, lines 1-26).

Quayle does not explicitly teach performing the process wherein the dishwasher is a conveyor dishwasher, and discloses blowing the air rather than using suction. Woerter discloses a process of using a conveyor dishwasher as in claim 1 and the skilled artisan would have found it obvious to try performing the process as per Quayle wherein the dishwasher is a conveyor dishwasher as per claim 1, such as per the method of the Woerter teaching, with a reasonable expectation of success since there are only three kinds of dishwashers: slidable rack, drawer and conveyor. Further, the skilled artisan would have found it obvious to modify the process such that the air is extracted air suction instead of via blowing with a reasonable expectation of success since these are known equivalents for extracting air. It is noted that an operating state wherein there are no dishes being loaded into a zone results in a wholly closed position, and an operating state wherein a dish is being loaded into a zone results in an open position or a partially closed position, or the operating state is controlled by the disposition of wash ware in the dishwasher.

Regarding claim 7, Quayle and Woerter disclose a process wherein the closing elements (Woerter at Fig. 1, ref. 52 and 66) are closed when the washing zone is

switched off, the rinsing zone is switched off, the drying zone is switched off and when there is no wash ware located in these regions (no wares to open elements shown at Woerter Fig. 1, ref. 52 and 58).

Response to Amendment

13. The claim objections made in the previous Office action are withdrawn in view of the amendment. The rejections of claims 1, 6 and 7 under 35 USC 112, second paragraph, the rejection of claim 2 under 35 USC 112, second paragraph, with respect to the fan and heat-recovery device being part of the required structure of the dishwasher, and the rejection of claim 4 under 35 USC 112, second paragraph, with respect to the speed-control means being part of the required structure of the dishwasher, made in the previous Office action are withdrawn in view of the amendment. The rejections of claims 2, 4 and 5 under 35 USC 103(a) are withdrawn in view of the amendment. A new claim objection and a new rejection under 35 USC 112, second paragraph, are made herein as discussed above in the sections "Claim Objections" and "Claim Rejections - 35 USC § 112".

Response to Arguments

14. Applicants' arguments filed 4/7/2010 have been fully considered but they are not persuasive.

Regarding applicants' argument that the limitations "the capacity" in claim 2, line 2, and "the exhaust-air quantity" in claim 2, line 2, are not indefinite under 35 USC 112,

second paragraph, for insufficient antecedent basis since, it is alleged, capacity and exhaust air quantity are inherent in the normal operation of a fan (remarks at page 6, first paragraph), it is agreed that a fan in operation will have a capacity and exhaust-air quantity (provided the fan is in an exhaust-air environment). However, a particular capacity ("*the* capacity") and a particular exhaust-air quantity ("*the* exhaust-air quantity") are not inherent since these features can vary in quantity depending upon, inter alia, a speed at which the fan is operating at a particular moment.

In response to applicants' argument that there it would not have been obvious to combine Quayle (US 4,247,158) and Woerter (DE 19644438) since, it is alleged, operations in the process as per Quayle teaching are performed in one chamber while operations in the process as per the Woerter teaching are performed a series of chambers (conveyor machine) (remarks at page 7, last full paragraph, and page 8, paragraph beginning, "This rejection"), the skilled artisan would have found it obvious to try performing the process as per Quayle wherein the dishwasher is a conveyor dishwasher, such as per the method of the Woerter teaching, with a reasonable expectation of success since there are only three kinds of dishwashers: slidable rack, drawer and conveyor.

In response to applicants' argument that a modification of the Quayle apparatus in view of the Woerter teaching would, it is alleged, not result in an apparatus recognizable as made according to the Quayle teachings (remarks at page 8, paragraph beginning, "This rejection"), applicants are reminded that claims 6 and 7 are method claims, not apparatus claims. Thus, it is no the modification of an apparatus per se, but

rather a disclosure of process steps in the applied art, which is relevant to the issue of rejection. Assuming, arguendo, claims 6 and 7 were apparatus claims, applicants' argument is not persuasive since the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981).

Applicants' arguments with respect to claim 7 (remarks at page 9, paragraph beginning, "Claim 10"; applicants have apparently misidentified claim 7 as claim 10, which is withdrawn) have been considered but are moot in view of the new ground(s) of rejection. It is noted that applicants' argument that a modification of the Quayle apparatus in view of the Taylor (US 5,660,195) teaching would not be obvious be obvious, it is alleged, Taylor discloses a single chamber dishwasher (remarks at page 9, paragraph beginning, "Applicants observe") is not persuasive for the same reasons discussed above addressing applicants' same argument with the Quayle/Woerter combination.

Allowable Subject Matter

15. Claims 2, 4, 5 and 11 would be allowable if rewritten to overcome objections and the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The closest prior art references are: Woerter (DE 19644438), which teaches a conveyor dishwasher, and US 4,247,158 to Quayle, which teaches a dishwasher airflow drying system. The prior art references of record, taking alone or in combination, do not anticipate or suggest fairly the limitations of a dishwasher which is fully capable of being used wherein a plurality of openings are provided between the zones and the suction-extraction means, a closing element is provided at each opening for controlling the flow of air through the opening, each of the closing elements being movable between an open position, a wholly closed position and a partially closed position; and wherein the movement of the closing elements between the open, wholly closed and partially closed positions is controlled in dependence on an operating state of individual ones of the zones of the dishwasher and a capacity of the exhaust-air fan is controlled in dependence on the operating state(s), or wherein the movement of the closing elements between the open, wholly closed and partially closed positions is effected by wash ware via deflectable lever elements.

Conclusion

16. Applicants' amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicants are reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

17. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eric Golightly whose telephone number is (571) 270-3715. The examiner can normally be reached on Monday to Thursday, 7:30 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Kornakov can be reached on (571) 272-1303. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

EWG
/Michael Kornakov/
Supervisory Patent Examiner, Art Unit 1714